Supreme Court, U.S.
FILED
07-876 JAN 2 - 2008
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No. _____

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In the
SUPREME COURT OF THE
UNITED STATES

John L. Corrigan,

Petitioner,

v.

King County Deputy, Unknown #1,
et. al.

Respondents.

On Petition For Writ of Certiorari
To The Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

John L. Corrigan
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Auburn, WA 98001
Pro Se
253.735.5025

QUESTIONS PRESENTED

1. Whether a complicated Motion for Summary Judgment and a Motion for Rule 11 (resulting in a sanction of $10,000) denies a pro se petitioner "due process" when they are both submitted to the trial court at the same time.

2. Whether a Court of Appeals that "rubber stamps" the district court's Rule 11 decision denies petitioner "due process" when significant, legally supported issues are presented.

3. Whether the defendant's motion detailed the specific conduct alleged to violate Rule 11(c)(1)(A) in a manner required by rule.

4. Whether issues not addressed in defendants Rule 11 motion but considered by the district court denies a pro se petitioner "due process."

5. Whether an improperly determined $10,000 Rule 11 sanction for a pro se first time offender is abuse of the court's discretion.

List Of Parties

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Representing:
King County Deputy, Unknown #1
King County Deputy, Unknown #2
King County Deputy, Unknown #3
Susan Rahr, King County Sheriff
King County , State of Washington

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OPINIONS BELOW

The opinions of the United States District Court, and the United States Court of Appeals for the Ninth Circuit are unreported.

JURISDICTION

The judgment of the United States Court of District Court for the Western District of Washington was entered on August 2, 2006. (App. 1). A follow up judgment of the United States District Court for the Western District of Washington was entered October 27, 2006. (App. 30) On appeal to the United States Court of Appeals for the Ninth Circuit the court affirmed the judgment on July 23, 2007. (App. 34) United States Court of Appeals for the Ninth Circuit issued an Order denying the petition for panel rehearing en banc on October 4, 2007. (App. 36)

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The "due process clause" of the 5th Amendment to the U.S. Constitution.

Federal Rules of Civil Procedure, Rule 11(c) Sanctions which provides in pertinent part:

> (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

STATEMENT OF THE CASE

Corrigan was stopped for speeding and refused to sign a civil traffic infraction. He was given a criminal citation for refusing to sign the traffic infraction. When Corrigan refused to sign the criminal citation, he was taken to jail. Corrigan contested both "crimes" through appeals and habeas corpus relief. Also, Corrigan filed suit in the U.S. District Court for the Eastern District of Washington alleging various civil rights violations.

On November 10, 2004, the Adams County District Court initiated the process for a summons against Corrigan while Corrigan was seeking post-conviction relief. On November 18, 2004 (8 days after the District Court initiated action), the state appellate court relinquished jurisdiction of this case to the Adams County District Court. Corrigan responded by letter informing the court that he could not make the court date and why. The trial court issued a summons and a warrant for failure to appear in early December 2004.

Four months after the warrant was issued, the prosecutor hand-carried the warrant to the sheriff's department and the warrant was input to the statewide database seeking statewide extradition (as opposed to East Only – East of the Cascade Mountains for minor infractions - or West Only). Within 24 hours (Adams County Deputy Prosecutor and/or the Adams County Sheriff's Office notified King County by phone for a special request to pick Corrigan up), Corrigan was arrested at his home by at least three King County Deputy Sheriffs driving three King County squad cars late in the afternoon for failure to appear on the misdemeanor charge of failure to sign a traffic infraction.

Corrigan filed suit in the U.S. District Court for the Western District of Washington. Corrigan's suit was dismissed on summary judgment (both with and without prejudice) and sanctions of $10,000 were assessed by the

district court against Corrigan on motion of the defendant.

Corrigan appealed to the Ninth Circuit Court of Appeals. He requested an en banc hearing prior to a three-judge panel – there was no response from the court. After the appellate court's three-judge panel affirmed the district courts decision, Corrigan again requested an en banc hearing which was denied.

Corrigan is now seeking certiorari with this Court.

Whether the combining of a Rule 11 motion and a motion for summary judgment deny petitioner "due process"

SUMMARY OF REASONS FOR GRANTING THE WRIT

I. Concept of Fair and Impartial Trial

There is a significant disconnect between the concept of a fair trial and the reality of a fair trial. I can point to three recent cases that I was involved in (re: travel expenses, VISA, and a police officer) in which the trial court's and the appellate court's decisions lacked the integrity I would expect from a fair and impartial tribunal.

However, nothing is even close to the abuse I have received from the case at bar.

This case is an illustration of a blatantly abusive, unwarranted, and prejudicial attack on

not only me but upon the entire judicial process. I have been sanction under Rule 11 for $10,000, which in itself is not the entire issue. The issue is more in the way it was maliciously and unlawfully carried out by the judge and the defendant in roughly a 75% (judge) and 25% (defendant) contribution. Consider the following:

Sanction I

In a similar trial with similar defendants,[1] I was sanctioned (Sanction I) under Rule 11 $3,000 by the district court judge for seeking frivolous damages relating to judicial immunity. On appeal to the Ninth Circuit, the sanctions were reversed because the defendant failed to provide a 21 day safe harbor. The trial judge showed prejudice in his actions because:

- I sincerely apologized to the judge – which should have settled the matter; and
- The trial court ignored the 21 day safe harbor.

In spite of the judge's bias, the $3,000 sanction was supported by the defendant's costs submission relating to that specific issue. In other words, the amount of $3,000 was completely within the parameters of Rule 11 and

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[1] The first lawsuit involved Adams County for alleged abuses of civil rights relating to a traffic ticket. The second lawsuit involved Adams County and King County for alleged civil rights abuses relating to an arrest to serve jail time relating to the traffic ticket.

no prejudice can be attached to the court's determination of the actual amount as it was very judicially determined.

Also, the sanction was overturned on appeal which mitigates some of the circumstances.

Sanction II

Sanction II is the sanction of $10,000 relating to the case at bar. The motion was ill conceived and unprofessional. It addressed a single issue (arrest warrant being put into the statewide system) in just a vague and insubstantial way. After I responded to the motion, the court added other issues to it (like malicious prosecution) denying me the due process opportunity to adequately respond. The court violated Rule 11 in numerous ways as explained in the following section.

II. Rule 11 Importance

In Justice Scalia's Dissent to Rule 11 Amendments[2]

> In my view, those who file frivolous suits and pleadings should have no "safe harbor." The Rules should be solicitous of

[2] Rule 11 Sanctions, p. 842. Dissenting Statement of Justice Scalia Supreme Court of the United States Amendments to the Federal Rules of Civil Procedure.

> the abused (the courts and the opposing party), and not of the abuser.

I respect and sympathize with Justice Scalia's concern for frivolous suits. However, and respectfully, I detect a slight bias in the above statement. The respected Justice is assuming that the "abused" is the courts and the opposing party. What if the "abuser" ***is*** the courts and the opposing party? I will argue respectfully and truthfully to this Court that twice I was considered the abuser by the court, while the court and the defendant were the abuser in both cases. Under Sanction I the participation worked out to defendant 75% and court 25%. Under Sanction II the participation worked out to defendant 15% and court 85%. Consider:

The situation under Sanction I was a sham perpetrated by the defendant. The defendant frivolously:

- Submitted a motion that the defendant knew to be false – the defendant knew from my deposition that I do not sue judges for damages;
- The defendant ***deliberately*** ignored the 21 day safe harbor – because he knew that given the 21 day safe harbor I would have corrected my obvious error;
- The defendant deliberately ran up the motion fees of $3,000 on a minor claim that could

have been satisfied by looking up 'judicial immunity" in Black's Law Dictionary;

- The defendant embarrassed the district court judge by having his Rule 11 motion overturned (Of course I am speculating on this item); and
- The defendant caused an unnecessary appeal and a great deal of litigation.

The situation under Sanction II was similar but different:

- The defendant's motion was vague and insubstantial – not meeting the requirements of Rule 11;
- The defendant made false and inflammatory statements under the Statement of the Case which the judge used to justify the sanction;
- The defendants did not match the claims – the caption stated only one defendant but the motion specified violations by three defendants;
- The district court used numerous improper factors to determine the basis and amount of the sanctions;
- The district court improperly denied me due process by combining both the summary judgment motion with the Rule 11 motion;

- The appellate court did not review the appeal in a manner expected of a Rule 11 motion.

III. Case at Bar

I consider this case an anomaly (at least I sincerely hope so). The Rule 11 transgressions by the defendant, the court of appeals, and most definitely the district court, are blatant and numerous. However, it does have some redeeming qualities. If the courts are serious about the negative effects of Rule 11 satellite litigation, then they had better get their act together. This case illustrates all (or almost all) of the abuses that can befall Rule 11 motions. Let me confer upon this Court, my new found knowledge of this matter, and how Rule 11 should work.

1. The 21 day safe harbor should be (as it is) required. Litigants, attorneys, and, yes, even judges make mistakes. They should be allowed to correct them in a reasonable manner – that is due process. Now if the nonmoving party does not correct it, it is all the more support for the Sanction and the amount.
2. Judges should be cautioned not to go ballistic when "pro se" and "frivolous" are mentioned in the same sentence.
3. Judges should ask themselves "does the issue itself justify the court's time." Take for

instance the issue of judicial immunity in Sanction I. Let's also assume, arguendo, that I deliberately included a section asking for damages against the judge to harass and embarrass him/her. We learn as children that "stick and stones will break our bones but names will never hurt us." That minor issue and others of its ilk, unless clearly abusively presented, should be left alone. In this case, I would only be embarrassing myself not the judge. Therefore, the issue has to be important enough to warrant the court's time and effort – and the accuser should be on notice that the claim should be worthy of the court or he/she will face sanctions.

4. Next the judge must determine whether the motion is presented in a manner that puts the nonmoving party on notice. That is, if the motion is vague it violates the 21 day safe harbor. After all, what good is it to require a 21 day safe harbor when the motion itself is not clear and/or not clearly addressing the offending issue? Sanction I meets this requirement (in spite of all its other shortcomings) while Sanction II clearly does not.

5. There should be no combined summary judgment and Rule 11 motions as it would be a violation of due process by denying a fair and impartial trial. It can also confuse everyone, the judge, the litigants, and the appellate court. Why encourage satellite

litigation? The Rule 11 motion should stand on its own and the moving party should not be able to abuse the process by clouding the issues as this defendant has done – twice.[3] Clearly delineate the time period like one or two weeks after a Rule 11 is decided.

6. Now the court can turn to the nonmoving party's response to determine whether that complained upon issue is supportable – why or why not? There must also be guidelines for the district court judge to legally and responsibly support his determination. Not the improper and unsubstantiated kind that the district judge generated in Sanction II.

7. Next to the amount of sanctions. Identify the top three - four issues to address and require the court to address them in the order of importance.[4] Allow the courts to support the amount with other particular critical factors *after* they have responded to the 3-4 main issues. For example: Suppose that "least severe" is one of the top issues to address. The court would be required to provide justification for claiming that $10,000 is the "least severe" sanction that is necessary to satisfy Rule 11 parameters. It would then go on to address the other top two, and then add

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[3] Both times the alleged violations relate to the original complaint. However, the defendant waited months to make the motion – this is untimely and violates Rule 11.

[4] The 6th Circuit is already doing this. See below.

any other critical factors the court determines would support the amount of the sanction.

8. The appellate court. Require the appellate court to adequately respond to at least three of seven issues presented (or four of ten, or five of twelve, etc.). No rubber stamping like the court did in this case. Also, if there is justification for an en banc hearing, then the appellate court should grant it. In the case at bar, the appellate court gave a clearly inadequate response to numerous Rule 11 violations. The Ninth, when confronted by claims by a respected Rule 11 authority, that going to a three-judge panel at the Ninth Circuit is like going to a crap shoot (slightly rephrased), it should take pains to take the opportunity to be more consistent in their Rule 11 determinations. For example: In this case the Ninth Circuit was given an opportunity both before and after the three-judge panel for an en banc hearing. They declined them both.

Finally, until this Courts establishes a quality control approach for trial judges, parties, and appellate courts you will get all the satellite Rule 11 litigation that you will so richly deserve.

REASONS FOR GRANTING THE WRIT

I. This court should provide guidance on the important issue of combining a motion for Summary Judgment with a motion for Rule 11 Sanctions.

"[A] court that simultaneously decides the merits of a case and the sanctions question may run the risk of denying due process to the sanctioned person. The Second Circuit explained in *Healey v. Chelsea Resources, Ltd.*:

> A court that concludes, in deciding the merits, that a particular claim clearly lacked merit, will likely have formed some view as to whether sanctions may be warranted. Though there is thus perhaps some small measure of efficiency to be gained in combining consideration of sanctions with consideration of the merits, we conclude that the interest in efficiency is not sufficiently compelling in the context of a claim that turns on the plaintiff's credibility. In such a case it is highly disadvantageous to the plaintiff for both sets of arguments to be addressed simultaneously, for it can only reduce a plaintiff's chances of prevailing on the merits if simultaneously with asking the court to believe his testimony and thereby

> find his claim meritorious he must urge that this claim is "at least not frivolous." . .

Rule 11 Sanctions, Case Law, Perspectives and Preventive Measures, Georgene M. Vairo, 3rd, © 2004 American Bar Association.

I would suggest that it is even more disadvantageous to a pro se litigant who does not have the resources available that most attorneys have. Also, there are other issues:

- tactical abuse of the process that the moving party can gain by making both issues more complicated collectively as they already are individually;
- holding off a Rule 11 motion as long as possible to create the most havoc possible thereby not putting nonmoving party on notice in a timely manner as required by Rule 11;[5] and
- possibility of trial judge combining issues (as it is alleged in this case) or confusing the issues by improperly applying summary judgment issues to Rule 11 motion issues.

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[5] Both Sanction I and Sanction II were related to the Complaint but the defendant waited long after the Complaint to file the motions. Sanction I: Complaint filed 07/18/03, Summary Judgment and Sanctions 06/18/04; Sanction II: Complaint filed 10/12/05 and Motion for Summary Judgment 04/28/06 and Motion for Sanctions 04/28/06 -- but given the 21 day safe harbor prior to that date.

Finally, if the courts are concerned about "satellite litigation" would it not be in their best interests to clearly delineate the two issues so that the nonmoving party cannot claim due process violations as I have done? Does this situation "appear" to provide a fair and impartial tribunal? Why seek out ways in which to allow the claim to be made?

II. This court should provide guidance on the important issue of appellate review, especially when a sanction of $10,000 is involved.

> [a] troublesome aspect of a trial court's power to impose sanctions, either as a result of a finding of contempt, pursuant to the court's inherent power, or under a variety of rules . . . is that the trial court may act as accuser, fact finder and sentencing judge, not subject to restrictions of any procedural code and at times not limited by any rule of law governing the severity of sanctions that may be imposed.

> Thus, prior decisions caution that although the decision to impose sanctions is uniquely within the province of a district court, **we nevertheless need to ensure that any such decision is made with restraint and discretion. [Emphasis added]**

Schlaifer Nance & Co. v. Estate of Warhol, 194 F.3d 323, 333-34 (2nd Cir. 1999). *See also, Media Duplication Services, Ltd. V. HDG Software, Inc.*, 928 F.2d 1228, 1238 (1st Cir. 1991)(the appellate court should not act as a "rubber stamp," even though an across-the-board abuse of discretion standard was to be applied) and *Beverly Gravel, Inc. v. DiDomenico,* 908 F.2d 223 (7th Cir. 1990)(while the review is deferential, the court should give "careful reference to the standards governing the exercise of the court's discretion and to the purposes Rule 11 is meant to serve.")

The Ninth Circuit review was, respectfully, pathetic.

> After carefully examining Corrigan's arguments, the **district court concluded** that his claims were frivolous. *See Warren v. Guelker*, 29 F.3d 1386, 1390 (9th Cir. 1984)(noting that a litigant's pro se status must be considered when assessing claims for frivolousness). **The court** gave Corrigan an opportunity to produce evidence showing that his one potentially nonfrivolous argument had a factual basis.

> Corrigan failed to do so. **The court** also noted that Corrigan had acted similarly in a related case and that he had extensive experience as a plaintiff.
>
> After considering those factors, **the court** imposed sanctions of $10,000. The sanction was substantial, but **the court** did not abuse its discretion. [Emphasis added]

Memorandum, p. 2-3.

With all due respect to this Court, I would expect more than a "recap" of what the "district court did." This was a panel of three Ninth Circuit judges. I submitted arguments on:

- Unsubstantiated claims of preventing me from filing frivolous claims;
- Unsubstantiated reference to the dismissal of a similar lawsuit;
- Unsubstantiated claim that plaintiff is a fairly prolific pro sc litigant;
- Improper analysis of my ability to pay because I make $55,000; and
- Other factors including reasonableness; minimum to deter; and least severe.

These were all supported in my brief with generous and legitimate citations from the 1st, 2nd, 4th, 5th, 6th (2), 7th (2), 9th (2), and 11th Circuit Courts of appeal. Also, this Court was not left out. *See Haines v. Kerner*, 404 U.S. 519, 520-21

(1972)(Supreme Court requires courts to give Pro Se litigants wide latitude in their dealings with the court).

And yet, a panel of three Ninth Circuit judges could only address what the court found. I was slightly more interested in what *they* found after following the "careful reference to the standards governing the exercise of the court's discretion and to the purposes Rule 11 is meant to serve." It was a big disappointment. Even if all my arguments were "frivolous" they court could have addressed them and explained why.

Further, I gave the court two En Banc opportunities to respond. One opportunity was prior to the three panel decision (which the court did not respond to) and the other was after the three panel decision (which they did respond to be saying "No.") In both cases I pointed out the importance of the issue and the possibility that given the Ninth Circuit's track record with Rule 11 motions as a whole, there was a good possibility that I would not be afforded due process.

> Next to the Second and the Seventh Circuits, the Ninth Circuit has been the busiest Rule 11 court. Unlike the Seventh Circuit, which took a vigorous approach to enforcing Rule 11 from day one, the Ninth Circuit's jurisprudence has evolved over time. During the first few years after the 1983 amendments to Rule 11, a majority of

> Ninth Circuit judges took a generally lenient approach to Rule 11, except in egregious cases.
>
> **During the last several years, however, most Ninth Circuit opinions have resulted in an uneven enforcement of the rule. That ambiguity persists today. Accordingly, Rule 11 practice in the Ninth Circuit remains unpredictable, and the result on appeal is likely to be dictated by the jurisprudential preferences of whoever is sitting on the panel.** [Emphasis added]

Rule 11 Sanctions, p. 715. If Corrigan may paraphrase, according to a leading authority on Rule 11 motions, dealing with the Ninth Circuit is like going to a crap shoot.

I would think that as a matter of honor and integrity the Ninth Circuit would put some effort into their response. However, it still did not move the court to a better than a "rubber stamp" review.

III. This court should provide guidance on the important issue of the "specific" information required to properly motion the court for a Rule 11 Sanction.

Defendant's were not properly identified.

The motion for sanctions was initiated by defendant Adams County – "Defendant Adams County's Motion . . ." (App. 37) The Motion begins with "[D]efendant Adams County and its employees move . . ." The motion outlines (in vague terms) the fact that defendant Sheriff Barger and defendant Unknown Adams County Official put in a warrant in the statewide database. This really has nothing to do with defendant Adams County.[6] The district court's Order caption is "Order On Adams County Defendants' Motions for Summary Judgment and For Rule 11 Sanctions." (App. 1) The Order then starts off: "[T]his matter comes before the Court on two motions by Defendant Adams County and its employees Sheriff D. Barger and "Unknown

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[6] In an earlier pleading dated 12/22/05, the caption is: "Defendants Adams County, Adams County Sheriff D. Barger, and Unknown County of Adams Official FRCP Rule 26(a)(1) Disclosure" and starts out ". . . Defendants Adams County, Adams County Sheriff D. Barger, and unknown County of Adams official disclose . . ." In a later pleading (linked to the Rule 11 motion dated) 05/25/06, the caption is "Defendant Adams County, Unknown Official of Adams County, and Sheriff D. Barger's Reply Brief."

County of Adams Official." This is a fiasco! How can Corrigan be expected to respond to any motions when the defendant and the court do not even know who is asking for what?

This is not a "fair" trial. How can:

- The defendant get away without naming all the defendants in the original motion and then magically include them later?
- The defendant be representing someone (Unknown Official) that has not been served and that the court dismissed without prejudice because the official was not named or served?
- The district court so blatantly and obviously juggle the defendants in such a way to try and camouflage this ridiculous and very dishonest situation?

This does not meet the requirement for "specific" nor does it bode well for a fair and impartial tribunal.

Warrant Issue

The defendant claims that a valid warrant was issued. In fact it was not. The court did not have jurisdiction to initiate the process because the appellate court had not conferred jurisdiction back to the trial court until a few days after the process was initiated.[7] As it was an invalid

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[7] Request for summons was dated 11/10/04 but the appellate court did not release jurisdiction until 11/18/04

warrant, it cannot be the basis of a lawful arrest in Washington. *See Washington Criminal Practice, Chapter 5 Arrest Warrants and Bench Warrants, p. 5-5.* Besides, other courts have questioned the valid warrant when the warrant does not provide ample probable cause to make an arrest or the arrest is otherwise unreasonable. *See Police Misconduct, Law and Litigation, 3rd © 2004 West, p. 61.* Given that:

- the arrest was for a failure to appear for failure to sign a traffic infraction;
- I was actively seeking post-conviction relief;
- The court did not wait until they had jurisdiction;
- The warrant was signed in December 2004 but was submitted to the statewide database and within 24 hours I was arrested by 3-4 King County Sheriff's Deputies coming to my home in the early afternoon in three squad cars;
- That someone in Adams County directly contacted someone in King County to effect my immediate arrest; and
- That the warrant (valid or not) violated Adams County policy because it should not have been valid in King County.[8]

– 8 days later.

[8] The statewide database is has three designations. Statewide, East Only (East of the Cascades) or West Only

All this might be considered "unreasonable" but it could not, in any way, be considered "frivolous" unless it was by a biased court.

IV. This court should provide guidance on the important issue of considering issues not presented by defendant in their Rule 11 motion.

Defendant Adam County's motion was about: (App. 37)

- Actions by defendant Sheriff Barger and unknown official; and
- Warrant being input into the statewide database.

The district court, on the other hand, found:

- Actions by defendant Sheriff Barger and unknown official;
- Warrant being input into the statewide database; and
- **Plaintiff's claims for malicious prosecution against the Adams County Defendant.** (App. 22)

(West Only). Given the minor nature of the offense, the warrant should have only been allowed for East Only. In other words, the person inputting the warrant did not have the authority to issue it statewide because the county would not extradite for such a minor crime.

The defendant did not claim that there was "malicious prosecution against the Adams County Defendants." This claim is improper. But, then, so are the others.

If the trial court lacked jurisdiction to issue the warrant, then all those claims are not frivolous. The record shows that the court did not release jurisdiction until 10/18/04[9] – eight days after the trial court initiated the summons/arrest process.[10]

Even is it is possible that I am wrong, to determine that this is a frivolous claim is unfounded. I have a good faith belief that the district court did not have jurisdiction and, therefore, did not have authority to issue the summons.

I also made a reasonable argument that I could not be considered a failure to appear because I wrote a letter to the trial judge explaining why I could not be at the trial. *See People v. Forrester*, 37 Cal.Rptr.2d 19, 20 (Cal.App.3 Dist. 1994)("An element of the crime

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[9] Superior Court of Washington for Adams County, # 03 1 000 44 2, Order to Remand . . "NOW, THEREFORE, State of Washington v. John L. Corrigan shall be remanded to the Ritzville District Court for imposition of sentence." Dated 11/18/04 and signed by the Superior Court Judge.

[10] The Summons/Subpoena/Notice was based on a "notice date" of 11/12/04 with reference to Adalia A. Hille and an amended Summons/Subpoena/Notice was based on a "notice date" of 11/16/04 with reference to Joshua F. Grant.

of failure to appear is that the failure must be with the specific intent to evade the process of the court). Surely, with all my post-conviction appeals, the court cannot claim that I am trying to evade the process of the court.

V. This court should provide guidance on the important issue of the major monetary considerations for Rule 11 Sanctions.

The district court used improperly factors for granting a $10,000 sanction. For example:

1. The amount is based on the total case of costs presented by the defendant (approximately $18,000). (App. 31-32) This is totally improper as the amount of the sanction must be limited to the sanctioned violation.[11]
2. The claim of preventing Plaintiff from filing frivolous claims. This is unsubstantiated. What is the district court basing this on? A prior claim that the Ninth Circuit reversed? There is no evidence that I file frivolous claims. Only the court's innuendos. Surely the court is required to show some evidence.
3. The dismissal of a similar lawsuit. (App. 30-31) This is another innuendo with no support. What does "similar" lawsuit mean anyway?

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[11] FRCP Rule 11(c)(2): ". . . an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation."

The court got this from the defendant's dishonest claim under Statement of Facts in his original Rule 11 motion. There is no evidence to support this and it is untrue.

4. Plaintiff is a fairly prolific pro se litigant. Is that like a lawyer being a prolific attorney? What has this to do with a Rule 11 motion? Besides, it is based on an extensive list of "Corrigan" lawsuits (App. 27) with no evidence that they are mine, no evidence that if they are mine that they are all frivolous, or what the circumstances are that caused them. But, because I did not respond to the ridiculous claim, I must be guilty. Now that is not a fair and impartial judge. Isn't this like the age old question: "When did you stop beating your wife?" This is totally unfounded and there is no evidence to support this claim in the Rule 11 process. Also, the district court must show why this is relevant and the give me an opportunity to respond, *See Vollmer v. Publishers Clearing House*, 248 F.3d 698 (7th Cir. 2001).

5. Plaintiff's annual income is $55,000. (App. 32) You want satellite litigation? Go after a few attorneys for 20% of their annual income. The trial court places too much weight on my annual income. *See Silva v. Witschen*, 19 F.3d 725, 727 (1st Cir. 1994)(but the court makes a serious mistake in weighing factors.) *See also Danvers v. Danvers*, 959 F.2d 601, 605 (6th Cir. 1992)(the most important factor is

deterrence followed by compensation for expenses, mitigation of fees and ability to pay.) The court is ignoring those important factors.

Where are the things that the district court is supposed to be considering? Like:

1. "reasonableness," "minimum to deter," and "other factors. *See White v. General Motors Corp.*, 908 F.2d 675 (10th Cir. 1990), *cert. denied,* 498 U.S. 1069 (1991)).

2. Least severe.

> The least severe sanction adequate requirement serves a critical function: it ensures that Rule 11 does not degenerate into nothing more than a docket control device that the district courts [can] used to punish unsuccessful litigants who dare to raise their claims or defenses in federal court.

Akin v. Q-L Investments, Inc., 959 F.2d 521, 535 (5th Cir. 1992). See also Brubaker v. City of Richmond, 943 F.2d 1363 (4th Cir. 1991) (vacated because the district court had not considered the plaintiff's or his attorney's ability to pay the sanction or whether the sanction chosen was the least severe necessary).

3. Limit the sanction to the actual violation. (Discussed previously in #1 improper reasons above); and
4. The most important factor of deterrence (discussed in #4 improper reasons above).

CONCLUSION

This is clearly not the district court's nor the appellate court's finest hour. The Rule 11 abuses enumerated here are blatant and insidious. Consider the arrogance of a district court judge, competent in the knowledge that the appellate court will not reverse – obviously justified. Consider also the lack of effort on the part of the appellate court to adequately respond – even negatively – to legitimate factors presented.

This Court has a quality control problem that goes beyond Rule 11 sanctions – and this case is just an extreme example of the short comings of our judicial system.

I do not appreciate being sanctioned $10,000 based a district court's numerous violations of the Rule 11 parameters. But really, this isn't about the law. If this was really about the law, the district court would not do what it did, because the appellate court would have been there to correct the problem. That is what appellate court's do. This is your legacy.

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

John L. Corrigan
Pro Se
31912 – 53rd Place South
Auburn, WA 98001-3877

January 2008

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

John L. Corrigan	)	
Plaintiff,	)	NO. CV 05-1727-P
Vs.	)	
	)	Order on Adams County
Unknown King	)	Defendants' Motions for
County Deputy	)	Summary Judgment and for
#1, et. al.	)	Rule 11 Sanctions
_____	)	

This matter comes before the Court on two motions by Defendant Adams County and its employees Sheriff D. Barger and "Unknown County of Adams Official." For ease of reference, these three defendants will be referred to collectively as the "Adams County Defendants." First, the Adams County Defendants have moved for summary judgment. (Dkt. No. 14). Second, the Adams County Defendants have moved for Rule 11 sanctions against Plaintiff. (Dkt. No. 15). The Court, having considered the materials submitted in support of and in opposition to these motions, hereby ORDERS as follows:

(1) The Court GRANTS the Adams County Defendants' motion for summary judgment. (Dkt. No. 14). All claims against Adams County, Sheriff D. Barger, and "Unknown County of Adams Official" are DISMISSED.

(2) The Court GRANTS IN PART the

Adams County Defendants' motion for Rule 11 sanctions. (Dkt. No. 15). The Court finds that Plaintiff violated Federal Rule of Civil Procedure 11 by filing frivolous claims against the Adams County Defendants without reasonable inquiry. However, the Court reserves ruling on the type or amount of sanctions to be imposed because the Court requires additional evidence in order to made such a determination.

(3) Within thirty days of the date of this Order, the Adams County Defendants are directed to file a motion documenting the reasonable attorneys' fees that they incurred as a direct result of the Rule 11 violations. In responding to the forthcoming motion, Plaintiff may offer evidence relevant to determining an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof.

Background

Plaintiff John Corrigan, proceeding pro se, has brought claims under 42 U.S.C. § 1983 and Washington state law against Defendants Adams County, Adams County Sheriff D. Barger, and an "unknown County of Adams official." His complaint also raises claims against King County and various named and unnamed King County officials.

The events leading to this dispute began in February 2003, when Plaintiff was stopped for speeding in Adams County. He refused to sign

his notice of infraction, as required by Washington law, and was charged with Failure to Sign Notice of Infraction. In May 2003, Plaintiff was convicted

of this offense following a trial in Adams County District Court. He was sentenced to 90 days in jail, with 85 days suspended. Plaintiff was given 90 days from the imposition of the sentence to serve his five days in jail. In a civil proceeding, Plaintiff was also fined for speeding. Plaintiff unsuccessfully appealed both his criminal and civil cases.

In July 2003, Plaintiff filed a civil action in the U.S. District Court for the Eastern District of Washington, bringing Section 1983 and state-law claims against the Washington State Patrol troopers who arrested him, the Adams County District Court judge who presided over his criminal trial, the Adams County deputy prosecuting attorney who litigated his criminal case, the Adams County Sheriff, and Adams County. This civil action was dismissed on summary judgment in August 2004, with Rule 11 sanctions imposed on Plaintiff for bringing claims against an Adams County District Judge. See Corrigan v. Dale, No. CS-03-247-FVS, slip op. (E.D. Wash. Aug. 23, 2004). The Ninth Circuit affirmed the summary judgment ruling, but reversed the imposition of Rule 11 sanctions for failure to comply with the "safe harbor" requirements of Rule I I (c)(1)(A). Corrigan v. Dale, 2006 WL 83342 (9th Cir. Jan. 9, 2006).

Plaintiff did not serve his five-day jail sentence in 2003 or 2004. On November 9, 2004, Adams County deputy prosecuting attorney Barrett Scudder filed a motion in Adams County District Court seeking an order to require Plaintiff to appear and show cause why he should not be required to serve his sentence. Plaintiff does not dispute that he received notice of this hearing. Nonetheless, Plaintiff failed to appear at the show cause hearing. On December 1, 2004, Judge Joshua Grant issued a warrant for Plaintiffs arrest.

Plaintiff maintains and the Adams County Defendants do not dispute that the Adams County Sheriff's Office entered the warrant into a statewide database. Based on this warrant, Plaintiff was arrested in April 2005 in King County. Following his arrest, Plaintiff served two days in King County Jail, and then completed the remaining three days of his sentence in Adams County.

Plaintiff filed this lawsuit in October 2005. Plaintiff appears to allege that the Adams County Defendants unlawfully issued the arrest warrant and improperly entered the warrant into a statewide database. Plaintiff asserts that at the time the warrant was sought and issued, his criminal conviction and sentence were stayed pending appeal. Defendants deny that any stay was in place.

Adams County and its employees (Sheriff

Barger and "Unknown County of Adams Official"), have now moved for summary judgment. They have also moved for sanctions against Plaintiff under Rule 11.

Analysis

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Fed. R. Civ. P. 56(c). While "some alleged factual dispute between the parties will not defeat" a motion for summary judgment, "disputes over facts that might affect the outcome of the suit ... will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once a party has moved for summary judgment, it is the non-moving party's burden to provide sufficient evidence such that a reasonable jury could decide in their favor. Id. at 248. Because Plaintiff is proceeding pro se, the Court construes his pleadings liberally. Eldridge v. Block, 832 F.2d

1132, 1137 (9th Cir. 1987).

1. Claims Against "Unknown Adams County Official"

In his complaint, Plaintiff has identified two defendants from Adams County by their actual names: (1) the County itself-, and (2)

Sheriff D. Barger. Although Plaintiff also named an "Unknown Adams County Official" as a defendant in his complaint, Plaintiff has not moved to substitute a named defendant for this "unknown" official.

Plaintiff's complaint provides virtually no information about the "Unknown Adams County Official." The complaint only includes the two following paragraphs in which this "unknown" official is specifically mentioned:

> During all times mentioned in this Complaint, the defendant Unknown Adams County Official (UACO), was a duly appointed official in the County of Adams ... acting in their official capacity. UACO is sued, however, only in his/her individual capacity.
>
> * * *
>
> Defendants UACO, Barger, and Adams County caused a state-wide warrant be instigated against plaintiff. Warrant was: (a) without probable cause; (b) malicious prosecution; (c) retaliatory prosecution; (d) abuse of process; and (e) based on an unconstitutional statute. Further, there is every indication that this was a conspiracy between Defendants Adams
>
> County, Sheriff Barger, UACO and possibly others in Adams County.

Complaint pp 7 and 22.

The Ninth Circuit disfavors the practice of filing a complaint against an "unknown" or "John Doe" defendant. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, a plaintiff may name such unknown defendants "where the identity of alleged defendants will not be known prior to the filing of a complaint." Id. In such cases, "the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." Id.

However, a plaintiff who seeks to file suit against "unknown" defendants "must not only allege that the defendant is unknown, but also provide, or attempt to provide, an adequate description or other known information so that service of process can at least be attempted." 2 James Wm. Moore, Moore's Federal Practice § 10.02[2][d][i] (3d ed. 2006). In addition, it is not permissible for a plaintiff to name an "unknown" defendant in a complaint "if the plaintiffs ignorance of the defendant's true identity is the result of willful neglect or lack of reasonable inquiry." Id. "If reasonable inquiry would have revealed the true identity, a pleading naming John Doe defendants will be dismissed." Id.

Applying these principles, Plaintiffs claims against "Unknown Adams County Official" must be dismissed for several reasons. First, Plaintiff's complaint provides no clue regarding the identity

of the "unknown" official. In cases where the plaintiff's description of an "unknown" defendant is inadequate, dismissal is appropriate because it is impossible to serve process on such a defendant. See, e.g., Roper v. Grayson, 81 F.3d 124, 126 (10th Cir. 1996) (use of unnamed defendants permitted "so long as the plaintiff provides an adequate description of some kind which is sufficient to identify the person involved so process eventually can be served"); Keno v. Doe, 74 F.R.D. 587, 588 n.2 (D.N.J. 1978) (same).

Plaintiff has also had ample opportunity to seek discovery to determine the identity of the "unknown" Adams County official. Plaintiff filed this complaint in October 2005 and has had many months to seek discovery to ascertain the identity of this official. When a plaintiff fails to use the discovery process to identify an "unknown" defendant, dismissal of claims against the unknown defendant is appropriate. See Strauss v. City of Chicago, 760 F.2d 765, 770 n.6 (7th Cir. 1985). As one court has observed, "a district court otherwise prepared to act on dispositive motions is not

obligated to 'wait indefinitely for [the plaintiff) to take steps to identify and serve ... unknown defendants.'" Figueroa v. Rivera, 147 F.3d 77, 82 (1st Cir. 1998).

Construing Plaintiffs pleadings liberally, it is possible that Plaintiff intends the Court to regard either the Adams County deputy

prosecuting attorney or judge who were involved in issuing his arrest warrant as the "unknown Adams County official." Indeed, Plaintiff devotes much of his opposition brief to complaining about the actions of these individuals, despite the fact that neither person is named as a defendant in Plaintiff's complaint. However, the Court cannot presume that either of these officials is the "unknown" official named in Plaintiff's complaint because their identities are readily determinable: The deputy prosecuting attorney who sought Plaintiff's warrant was Barrett Scudder and the warrant was signed by Judge Joshua F. Grant. As noted earlier, a plaintiff will not be permitted to name an "unknown" defendant in a complaint where the identity of the "unknown" individual could be ascertained prior to filing the complaint through reasonable inquiry. See Moore, supra, § 10.02[2][d][i]. Therefore, Plaintiff's claims against "Unknown Adams County Official" are dismissed.

2. Section 1983 Claims

A. Claims Against Sheriff Barger

Construing Plaintiffs pleadings liberally, it appears that his claims under 42 U.S.C. § 1983 against Adams County Sheriff D. Barger are based on a theory that the Sheriff and/or his office violated Plaintiff's constitutional rights by: (1) causing an arrest warrant signed by Judge Joshua Grant to be entered into a statewide database; and (2) allegedly contacting the King

County Sheriffs Office to seek Plaintiff's arrest pursuant to the warrant. The Adams County Defendants argue that Sheriff Barger is immune from these claims, either on the grounds of quasi-judicial immunity or qualified immunity.

To support their argument for quasi-judicial immunity, the Adams County Defendants note that courts have held that "police officers, sheriffs, and other court officers who act in reliance on a facially valid court order are entitled to quasi-judicial immunity from suit under § 1983 for damages." Henry v. Farmer City State Bank, 808 F.2d 1228, 1239 (7th Cir. 1986); see also Coverdell v. Dep't of Social & Health Servs., 834 F.2d 758, 764-65 (9th Cir. 1987) (similar). Although Plaintiff asserts in his complaint that the warrant was "defective on its face" (Complaint 1 13), Plaintiff has not offered any evidence suggesting that the warrant issued by Judge Grant on December 1, 2004 was not facially valid. Among other things, the warrant was signed by the judge of the charging jurisdiction, specified Plaintiffs name and physical description, specified the offense charged, and was issued to all peace officers of the state. See Wash. Crim. Rule for Courts of Limited Juris. 2.2. Although Plaintiff suggests that the warrant was invalid because it was supposedly issued in violation of a stay of his conviction and sentence pending appeal,[1]

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[1] Aside from Plaintiff s conclusory assertion,

Plaintiff offers no reason why the Sheriff or his office would have reason to question the facial validity of the warrant. As such, Sheriff Barger is entitled to quasi-judicial immunity for acting in reliance on the warrant.

In addition, Sheriff Barger would also be entitled to qualified immunity from civil damages under Section 1983 for taking the actions alleged by Plaintiff. Determining whether a government official is entitled to

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Plaintiff offers no evidence (such as a court order) indicating that criminal conviction and sentence had been stayed pending appeal. In any case, it appears from the record that the Washington Supreme Court issued a final order regarding Plaintiff s appeal of his criminal case on November 3, 2004. On November 9, 2004, Adams County deputy prosecuting attorney Barrett Scudder filed a motion for an order to show cause why Plaintiff should not be required to serve his sentence. Despite the ruling from the state Supreme Court on his appeal, Plaintiff appears to believe that the Adams County District Court could not issue a warrant for his arrest until Plaintiff received rulings on: (1) a petition fora writ of certiorari submitted to the United States Supreme Court; and/or (2) a habeas corpus petition. Plaintiff offers no evidence or legal authority to support this contention.

qualified immunity "requires a two-part inquiry: (1) Was the law governing the state official's conduct clearly established? (2) Under that law could a reasonable state official have believed his conduct was lawful?" Browning v. Vernon, 44 F.3d 818, 822 (9th Cir. 1995). Here, Plaintiff points to no clearly established constitutional violation committed by Sheriff Barger. At most, the evidence indicates that Sheriff Barger acted on a facially valid warrant.

Therefore, Plaintiff's Section 1983 claims against Sheriff Barger are dismissed.

B. Claims Against Adams County

Section 1983 claims maybe brought against local government units such as a county.

However, the Supreme Court has held:

> [A] local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983.

Monell v. Dep't of Social Servs. of City of New York, 436 U.S. 658, 694 (1978).

Here, Plaintiff has not offered evidence to raise a genuine issue of material fact on whether

his alleged injuries were inflicted as a result of any policy or custom of Adams County. For the most part, Plaintiff appears to argue in his opposition brief that he was injured by an "out of control" prosecutor, presumably deputy prosecuting attorney Barrett Scudder. However, Plaintiff offers no evidence that Mr. Scudder had policy-making authority for Adams County. An official policy "must result from a deliberate choice made by a policy-making official," which "may be inferred from widespread practices or 'evidence of repeated constitutional violates for which the errant municipal officers were not discharged or reprimanded.'" Naell v. Las Vegas Metro. Police Dep't, 268 F.3d 924, 929 (9th Cir. 2001). "A plaintiff cannot prove the existence of a [local government] policy based solely on the occurrence of a single incident or unconstitutional action by a non-policymaking employee." Davis v. City of Ellensburg, 869 F.2d 1230, 1233 (9th Cir. 1989).

For similar reasons, Plaintiff has not offered evidence to raise a genuine issue of material fact on whether any alleged deprivations of his constitutional rights resulted from a custom of Adams County. "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency, and consistency that the conduct has become a traditional method of carrying out policy." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir.

1996); see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443-44 (9th Cir. 1989)

("Consistent with the commonly understood meaning of custom, proof of random acts or isolated events [is] insufficient to establish custom."). Plaintiff offers no evidence of such a custom here.

Finally, Plaintiff appears to suggest that Adams County and/or Sheriff Barger maybe held liable under Section 1983 for failure to train or supervise employees. A local government or official may only be held liable under Section 1983 for failure to train or supervise employees when such a failure reflects a conscious choice by a municipality and amounts to deliberate indifference to the rights of citizens. City of Canton v. Harris, 489 U.S. 378, 388 (1989). Plaintiff has offered no evidence suggesting such deliberate indifference here on the part of either Adams County or Sheriff Barger.

Therefore, Plaintiff's Section 1983 claims against Adams County are dismissed.

3. Remaining Claims

In addition to federal claims under Section 1983, Plaintiffs complaint also raises various claims under state law. His complaint alleges:

> [T]he defendants deprived the plaintiff of his rights to be free from false imprisonment, search and seizure of his person, unreasonable force, cruel and

> unusual punishment, unreasonable bail, abuse of process, malicious prosecution, and intentional infliction of emotional distress. All of these rights are secured to the plaintiff by the provisions of Washington law which are invoked under the supplementary jurisdiction of this court.

(Complaint p. 28). Although it is not clear that Plaintiff intends to maintain all of these state-law claims against each of the eight defendants named in his complaint, the Court considers each potential claim as it relates to the Adams County Defendants.

False Arrest/False Imprisonment: Under Washington law, the existence of probable cause is a complete defense to an action for false arrest or false imprisonment. See McBride v. Walla Walla County, 95 Wash. App. 33, 38 (1999). Here, the Adams County Defendants plainly had probable cause to seek Plaintiff's arrest and to imprison him, given his 2003 conviction and the issuance of a facially valid arrest warrant by Judge Grant.

Search & Seizure and "Unreasonable Force" Claims: Plaintiff has alleged no facts to support an unlawful search and seizure or "unreasonable force" against any of the Adams County defendants. Plaintiff was arrested by officials from King County, not Adams County.

Excessive Bail: Plaintiff has no claim for

excessive bail against any named defendants, given that neither Adams County nor Sheriff Barger set Plaintiff's bail. See, e.g. Kohl v. Casson, 5 F.3d 1141, 1149 (8th Cir. 1993).

Cruel and Unusual Punishment: Plaintiff provides no allegations or evidence to support a claim for cruel or unusual punishment with respect to jail conditions in Adams County. Plaintiff may believe that the length of his sentence (5 days) constituted cruel and unusual punishment. However, a challenge to the duration of a state prison sentence may be attacked in federal court solely through a writ of habeas corpus. See Young v. Kenny, 907 F.2d 874, 875 (9th Cir. 1990) ("Where a state prisoner challenges the fact or duration of his confinement, his sole federal remedy is a writ of habeas corpus").

Malicious Prosecution: Plaintiff has no basis to maintain a claim for malicious prosecution against any Adams County Defendants. Under Washington law, it is well-settled that a malicious prosecution action may be maintained only if the prosecution terminated in favor of the person asserting the claim. Clark v. Baines, 150 Wn.2d 905, 911 (2004). Here, the prosecution in Adams County did not terminate in Plaintiff's favor.

Abuse of Process: Plaintiff contends that numerous actions taken constitute abuse of process. However, Plaintiff does not present

sufficient evidence to support an abuse of process claim. A claim for abuse of process has two essential elements: (1) the existence of an ulterior purpose – to accomplish an object not within the proper scope of the process; and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings. Fite v. Lee, 11 Wn. App. 21, 27 (1974). "[T]he test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do." Batten v. Abrams, 28 Wn. App. 737, 747-48 (1981). Here, the actions taken by the Adams County Defendants compelled Plaintiff to serve his five days in jail, as required by his conviction and sentence in Adams County District Court. Although Plaintiff makes a number of conclusory allegations regarding the motives of the deputy prosecuting attorney in Adams County (an individual who is not named as a defendant in this action), Plaintiff has not offered any evidence suggesting that the Adams County Defendants used the judicial process to compel Plaintiff to do some collateral thing that he could not legally be compelled to do.

Intentional Infliction of Emotional Distress: Under Washington law, a claim for intentional infliction of emotional distress (more commonly known as the tort of "outrage") has

three elements: (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) actual result to the plaintiff of severe emotional distress. Brower v. Ackerley, 88 Wn. App. 87, 98 (1997). Only conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" supports an outrage claim. Reid v. Pierce County, 136 Wn.2d 195, 202 (1998). "[T]he trial court must make an initial determination as to whether the conduct may reasonably be regarded as so 'extreme and 'outrageous' as to warrant a factual determination by the jury." Jackson v. Peoples Fed. Credit Union, 25 Wn. App. 81, 84 (1979). Here, the Court finds that the conduct of the Adams County Defendants cannot reasonably be regarded as being so extreme and outrageous to support a claim of outrage.

Failure to Transport Plainti ff to Adams County: In his opposition brief, Plaintiff asserts that Adams County failed to transport Plaintiff from King County to Adams County to serve his sentence. Putting aside the fact that this allegation was not raised in Plaintiff's complaint, Plaintiff offers no evidence to support his assertion that Adams County was obliged to transport him from King County, nor does he offer any legal authority or argument to support a claim based on this contention.

Summary

For the reasons discussed above, Plaintiffs state-law claims against the Adams County Defendants must be dismissed.

4. Request for Rule 11 Sanctions

By separate motion, the Adams County Defendants have moved for sanctions against Plaintiff under Federal Rule of Civil Procedure 11.[2]

The Adams County Defendants complied with the "safe harbor" requirements of Rule I I (c)(1)(A) by serving a copy of their motion for sanctions on Plaintiff at least 21 days before filing the motion with the Court, along with a letter to Plaintiff explaining that the motion would be filed if Plaintiff did not dismiss his complaint against Adams County, Sheriff Barger, and "Unknown Adams County Official."

Rule 11 (b) provides, in relevant part:

> By presenting the court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable

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[2] Plaintiff responded to both the summary judgment motion and the Rule 11 motion in a single brief. Defendants also filed a single reply brief for both motions.

> under the circumstances, --
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery ....

In turn, Rule I I (c) provides that if the court determines that Rule 11(b) has been violated, the Court may impose an appropriate sanction on the parties that have violated the rule.

Rule 11 applies to unrepresented ("pro se") parties. However, a court "must take into account a plaintiff's pro se status when it determines whether the filing was reasonable." Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994). Here, even taking into account Plaintiff's pro se status, the Court

finds that Plaintiff failed to conduct an objectively reasonable inquiry before signing and

filing a complaint that included frivolous legal claims against the Adams County Defendants.

First, the Court finds that Plaintiffs claims against Sheriff Barger are frivolous and that it was objectively unreasonable for Plaintiff to bring such claims against the Sheriff. Plaintiffs complaint alleges that the Sheriff (along with Adams County and an unknown Adams County official) improperly "instigated" a statewide arrest warrant against him. Plaintiff appears to base his claims against the Sheriff on a theory that: (1) the Sheriff or his office entered a warrant signed by an Adams County District Judge into a statewide database; and (2) the Sheriff or his office "personally" contacted the King County Sheriffs Office to request that Plaintiff be immediately arrested pursuant to the warrant. However, Plaintiff offers no legal authority that supports his contention that type of this conduct by the Sheriff or his office violated any of his rights under the United States Constitution or under Washington law, nor does he offer any nonfrivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law regarding the Sheriffs liability for such conduct under federal or state law.

Plaintiff suggests (without providing evidentiary or legal support) that the arrest warrant was improperly issued because his conviction and sentence had supposedly been stayed in order to permit him to pursue a

petition for a writ of certiorari with the United States Supreme Court and/or a habeas corpus action. However, Plaintiff provides no evidence that the warrant on its face was not valid, despite his allegation in his complaint that the warrant was "defective on its face." In short, Plaintiff provides no legal authority or nonfrivolous argument suggesting that a law enforcement official are subject to suit under federal or state law for entering a facially valid warrant issued by a court into a state database or by contacting other law enforcement officials to request action on a facially valid warrant.[3]

In addition, Plaintiff's claims for malicious prosecution against the Adams County Defendant are plainly not warranted by existing law or by any nonfrivolous argument for the extension, modification, or reversal of existing

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[3] To the extent that Plaintiff believes that his arrest warrant was improperly issued, his complaint would be with the deputy prosecuting attorney who sought the warrant and/or the judge who issued the warrant, not with law enforcement officials who simply acted on a facially valid Court order. Neither the deputy prosecuting attorney nor the judge are named in the complaint — perhaps in recognition of the doctrines of prosecutorial and judicial immunity.

law or the establishment of new law. It is black-letter law in Washington that a malicious prosecution action may only be maintained if the proceedings terminated favor of the party bringing the claim. See, e.g., Clark v. Baines, 150 Wn.2d 905, 911 (2004) (noting that a malicious prosecution claim arising from a criminal action requires the plaintiff to prove several elements, including proof "that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned"). Even as a pro se litigant, it was objectively unreasonable for Plaintiff to raise malicious prosecution claims in this action because he was explicitly informed of this rule in the order granting summary judgment in his prior civil rights case in the Eastern District of Washington. See Corrigan v. Dale, No. CO3-247, slip op. at 9 (E.D. Wash. Aug. 23, 2004) (noting that "[i]n order to prevail on his malicious-prosecution claim, Mr. Corrigan must prove the underlying criminal case was terminated on the merits in his favor" and dismissing claim for failure to satisfy that requirement).

On the record before it, the Court also finds that Plaintiff's claims against Adams County are frivolous and that it was objectively unreasonable for Plaintiff to such claims. To the extent that Plaintiff's claims against the County are based on the actions of Sheriff Barger or his office, Plaintiff" claims would be frivolous because there is no legal basis to find that the Sheriff or his office violated Plaintiff's rights

under federal or state law by entering a facially valid arrest warrant into a state database. To the extent that Plaintiff is seeking to hold the County liable for the actions of the deputy prosecuting attorney who sought Plaintiff's arrest warrant and/or the actions of the judge that issued the arrest warrant, Plaintiff's claims are frivolous because Plaintiff has provided no competent evidence or legal authority to suggest that the warrant was improperly sought or issued. Moreover, even if the warrant was improperly sought by the deputy prosecuting attorney or issued by the Adams County District Court judge, Plaintiff has offered no evidence suggesting that such actions were taken in accordance with a County policy or custom, as required to impose liability on the County under Section 1983.

Plaintiffs position appears to be that the arrest warrant was improperly issued because his conviction and sentence were supposedly stayed when the warrant issued. However, Plaintiff has not produced a copy of any court order indicating that such a stay was in place. The existence of such a stay would not alter the Court holding that Plaintiff has no valid claims against the Adams County Defendants named in the complaint, since there is no evidence that issuing a arrest warrant while a stay was in place could be attributable to the County, Sheriff Barger, or "Unknown County of Adams Official." However, if a stay was in place, there may at

least be a basis to find that Plaintiff had a reasonable belief that the arrest warrant was improperly issued.

In short, absent any competent evidence that a stay of Plaintiff's conviction and sentence was in place when his arrest warrant issued, the Court finds that Plaintiff had no objectively reasonable basis to bring claims against the County based on the "instigation" of this warrant. However, if Plaintiff can produce competent evidence (such as a court order) demonstrating that his conviction and sentence were in fact stayed when the arrest warrant was issued, the Court will revisit its determination regarding the frivolousness of Plaintiff's claims against the County.

Although the Court finds that Plaintiff has violated Rule 11, the Court does not have sufficient evidence before it to make a reasoned determination regarding the type or amount of sanctions. While Defendants argue that they should be awarded their attorney fees as a sanction, such an award it not automatic upon the finding of a Rule 11 violation. As the Ninth Circuit has observed, "Rule 11 `provides for sanctions, not fee shifting. It is aimed at deterring, and, if necessary punishing improper conduct rather than merely compensating the prevailing party.'" United States ex rel. Leno v. Summit Constr. Co., 892 F.2d 788, 7901 n.4 (9th Cir. 1989).

It should also be noted that the Advisory Committee notes to the 1993 amendments to Rule 11 indicate that a variety of factors may be proper considerations in determining what sanctions, if any, should be imposed for a Rule 11 violation. This considerations include:

> Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants.

See also Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994) ("a court can properly consider plaintiff's ability to pay monetary sanctions as one factor in assessing sanctions"). Here, the Court lacks information regarding several of these considerations. For example, the Court does not have information regarding Plaintiff's

financial resources or his legal training.[4]

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[4] However, it appears that Plaintiff is not an inexperienced pro se litigant. Putting aside Plaintiffs prior civil case in the Eastern District of Washington and his pro se appeals of his criminal and civil cases from Adams County, Plaintiff filed two other lawsuits in this Court in the fall of 2005: (1) Corrigan v. Kline, CO5-1728RSM; and (2) Corrigan v. VISA, U.S.A., CO5-1622RSM. A person named John L. Corrigan also previously filed five other civil suits in this Court between 1988 and 1996: (1) Corrigan v. USA, C88-523JCC; (2) Corrigan v. Steere, C92-1511CRD; (3) Corrigan v. Baker, 94-162OBJR; (4) Corrigan v. Andersen, C94-5373FDB; and (5) Corrigan v. Bargala, C95-570JCC. In addition, a John L. Corrigan is named as a plaintiff in a number of other Washington state and federal cases in recent years, including: (1) Corrigan v. United States, 70 Fed. Cl. 665 (2006); (2) Corrigan v. Dollar, 89 Fed. Appx. 238 (Fed. Cir. Feb. 2, 2004), cert. denied, 543 U.S. 959 (2004); (3) Corrigan v. Germany, 43 Fed. Appx. 139 (9th Cir. July 22, 2002); (4) Corrigan v. Employment Security Dept., 99 Wn. App. 1035 (2000), rev. denied, 141 Wn.2d 1022 (2000); (5) Corrigan v. Imaginetics Inc., 2000 WL 194656 (Wn. App. Feb. 14, 2000), rev. denied, 143 Wn.2d 1010 (2001), cert. denied, 534 U.S. 1020 (2001); (6) Corrigan v. Allstate Ins. Co., 126 Wn.2d 1013 (1995), cert. denied, 516

Therefore, the Court directs the Adams County Defendants to file a motion seeking a specific amount of sanctions and documenting the reasonable attorneys' fees that they incurred as a direct result of Plaintiffs Rule 11 violations within 30 days of the date of this order. Such a motion must be noted for the Court's consideration no earlier than the third Friday after filing. See Local Civil Rule 7(d)(3). In responding to this motion, Plaintiff may offer evidence relevant to determining an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof. Plaintiff may also offer evidence (such as a court order) to support his contention that his criminal conviction and sentence were stayed at the time that his arrest warrant issued in December 2004.

Conclusion

The Adams County Defendants' motion for summary judgment is GRANTED. All claims asserted by Plaintiff against Adams County, Sheriff D. Barger, and "Unknown County of Adams Official" are DISMISSED.

The Court GRANTS IN PART the Adams County Defendants' motion for Rule 11 sanctions. The Court finds that Plaintiff violated

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U.S. 920 (1995); (7) Corrigan v. Tompkins, 67 Wn. App. 475 (1992), rev. denied, 121 Wn.2d 1003 (1993), cert. denied, 510 U.S. 842 (1993).

Rule I I by filing frivolous claims against the Adams County Defendants without reasonable inquiry. The Court reserves ruling on the type or amount of sanctions to be imposed. Within thirty days of the date of this Order, the Adams County Defendants are directed to file a motion documenting the reasonable attorneys' fees that they incurred as a direct result of the Rule 11 violations. In responding to this motion, Plaintiff may offer evidence relevant to determining an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof.

The clerk is directed to provide copies of this order to Plaintiff and to all counsel of record.
Dated: August 2, 2006

s/Marsha J. Pechman

Marsha J. Pechman

United States District Judge

ORDER ON ADAMS COUNTY DEFENDANTS' MOTION SEEKING SPECIFIC SANCTIONS pp. 6-7

Plaintiff also indicates in his response that he makes about $55,000 per year and that he has no formal legal training. However, the Court noted in its August 2nd order that it appeared that Plaintiff was not an inexperienced pro se litigant, citing more than a dozen civil cases that a "John L. Corrigan" had brought in federal and state court. (Dkt. No. 23 at 16 and n.4). Plaintiff has not disputed that he was the "John L. Corrigan" who brought any of those cases.

Defendants have noted that Plaintiff was previously sanctioned under Rule 11 in a civil action he brought in the U.S. District Court for Eastern District of Washington to challenge the circumstances surrounding his 2003 arrest and conviction. However, that sanction was later reversed by the Ninth Circuit because the defendant did not comply with the "safe harbor" requirements of Rule 11. See Corrigan v. Dale, 162 Fed Appx. 784 (9th Cir. Jan. 6, 2006).

D. Appropriate Sanction

The Court finds that a significant monetary sanction is warranted in this case to deter Plaintiff from filing frivolous claims in the future. Notably, Plaintiff filed his frivolous claims against the Adams County Defendants on

the heels of the dismissal of a similar civil suit in the Eastern District of

Washington against some of the same defendants. Plaintiff made his claims against the Adams County Defendants without reasonable inquiry or basis in law. Although Plaintiff does not have formal legal training, he is a fairly prolific pro se litigant and a modest sanction would be unlikely to deter him from filing frivolous claims in the future. Plaintiffs annual income of $55,000 also suggests that his financial resources are not insubstantial and that a significant monetary sanction is necessary.

As noted above, the primary purpose of Rule 11 sanctions is deterrence, not compensation. Rule 11 sanctions must be "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Rule 11(c)(2). Here, Defendants provide little basis

for the Court to find that a sanction as high as $18,000 is needed to deter Plaintiff from filing frivolous claims in the future.

In addition, as discussed earlier, Defendants' request for fees and expenses omits some key details. From the billing records provided by Defendants, the Court does not doubt that Defendants reasonably incurred well over $10,000 in fees and expenses in having to defend against Plaintiffs' claims — expenses that were directly incurred as a result of Plaintiffs'

decision to file frivolous claims against the Adams County Defendants. However, the Court cannot determine a reasonable amount of fees and expenses with precision, given Defendants' failure to identify which attorney or paralegal performed which tasks, to specify which tasks were performed by an attorney and which tasks were performed by a paralegal, and to describe the expenses claimed in greater detail. While Defendants could conceivably correct these omissions through a supplemental filing, such an additional step is not warranted because the $18,000 figure requested by Defendants appears to exceed the amount of sanctions warranted to deter future frivolous filings by Plaintiff.

Under the circumstances presented here and taking into account Plaintiffs annual income of $55,000, the Court finds that a $10,000 monetary sanction should be sufficient to deter Plaintiff from filing frivolous claims in the future. Plaintiff is ordered to pay this sanction to Defendant Adams County within 30 days of the date of this Order. The Court recognizes that the Advisory Committee Notes to the 1993 amendments to Rule 11 indicate that "if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty." However, the Court finds that it would be appropriate in this case to order Plaintiff to pay this sanction to Adams County to help ensure that county taxpayers are not forced to bear the full brunt of paying for Plaintiffs frivolous claims

in this case.

Conclusion

For the reasons stated above, the Court GRANTS in part and DENIES in part the Adams County Defendants' motion for specific sanctions. The Court finds that a monetary sanction of $ 10,000, rather than the $18,070.14 in sanctions requested by Defendants, should be sufficient to deter Plaintiff from filing frivolous claims in the future. Plaintiff is ORDERED to pay this $10,000 sanction to Adams County within 30 days of the date of this Order.

The Clerk is directed to send copies of this order to Plaintiff and to all counsel of record.

Dated: October 27, 2006

s/Marsha J. Pechman

Marsha J. Pechman

United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

John L. Corrigan, Plaintiff- Appellant, v. King County Deputy, Unknown #1; et al., Defendants.	)))))))	No. 06-35998 D.C. No. CV-05-01727 MEMORANDUM

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Submitted July 9, 2007**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: LEAVY, THOMAS, and BERZON, Circuit Judges.

John L. Corrigan appeals the district court's imposition of sanctions under Federal Rule of Civil Procedure 11. We review the imposition of Rule 11 sanctions for abuse of discretion, which may be found if the district court based its decision on an erroneous view of

the law or on a clearly erroneous factual finding. See Retail Flooring Dealers ofAm., Inc. v. Beaulieu of Am., LLC, 339 F.3d 1146, 1150 (9th Cir. 2003). We affirm.

Litigants are subject to Rule 11 sanctions for, among other reasons, presenting to the court "claims, defenses, and other legal contentions . . . [not] warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." FED. R. Civ. P. 11(b)(2).

After carefully examining Corrigan's arguments, the district court concluded that his claims were frivolous. See Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1984) (noting that a litigant's pro se status must be considered when assessing claims for frivolousness). The court gave Corrigan an opportunity to produce evidence showing that his one potentially nonfrivolous argument had a factual basis. Corrigan failed to do so. The court also noted that Corrigan had acted similarly in a related case and that he had extensive experience as a plaintiff.

After considering those factors, the court imposed sanctions of $ 10,000. The sanction was substantial, but the court did not abuse its discretion. AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

John L. Corrigan,)
Plaintiff- Appellant,) No. 06-35998
v.) D.C.No.CV-05-01727
King County Deputy)
Unknown #1; et al.,) ORDER
Defendants,)
_____)

Before: LEAVY, THOMAS, and BERZON, Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P.35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further filings will be accepted in this closed case.

[FILED Oct. 04, 2007 Cathy Catterson, Clerk, US Court of Appeals]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

John L. Corrigan Plaintiff, Vs. Unknown King County Official #1, et. al. _____	) NO. CV 05-1727-P)) Defendant Adams County's) Motion for Rule 11) Sanctions and) Memorandum of) Authorities in Support) Thereof) Note on Motion Calendar:) May 26, 2006

Defendant Adams County and its employees move the Court for an Order of sanctions against Plaintiff Corrigan.

This Motion is made pursuant to Fed.R.Civ.P. 11, the accompanying Memorandum of Authorities in Support of Motion for Sanctions, and the Affidavit of counsel certifying Defendant has complied with the 21 - day safe harbor notice as required by Fed.R.Civ.P. 11.

Defendant Adams County and its employees respectfully requests that the Court grant its motion for sanctions against Plaintiff Corrigan.

I. Basis

Defendant Adams County and its employees have moved this Court for an award of sanctions against Plaintiff for violating Fed.R.Civ.P. 11 by submitting a signed pleading that is not well grounded in fact, is not supported by existing law, and is imposed for an improper purpose, such as to harass and cause unnecessary litigation costs for Adams County and its employees.

II. Statement of Facts

On February 6, 2003, the Plaintiff, John L. Corrigan ("Corrigan) was driving on Interstate 90 in the Eastern District of Washington when he was stopped for speeding. *See facts set forth in Summary Judgment Order of the U.S. Dist. Ct. E.D. WA., attached as Exhibit 1.* " Under the state law of Washington, Corrigan was obligated to sign his notice of infraction. *See R. C. W. 46.61.021(3). Id.* He refused to sip the notice. Id. Willful refusal to sign a notice of infraction is a criminal misdemeanor. R.C.W. 46.61.022. Corrigan was advised that if he did not sign the traffic infraction, he would receive a criminal citation and he would be arrested. Despite this warning, Corrigan refused to sign and was put under arrest. *See also, Washington Uniform Criminal Complaint attached hereto as Exhibit* "2. "

On May 9, 2003, a jury trial was held and the jury returned a guilty verdict on the charge

that Corrigan willfully refused to sign his traffic citation in violation of R.C.W. 46.61.22. *See Verdict Form attached as Exhibit "3.* " District Judge Hille sentenced him to 90 days in jail with 85 days suspended. Additionally, Judge Hille fined him $1,000.00 with $525.00 suspended. *See attached as Exhibit "4.* - Judge Hille ordered the Adams County sheriff to commit Corrigan to serve his sentence. Mr. Corrigan had 90 days from the imposition of the sentence to serve his five days in jail. *See attached as Exhibit "5.* " In a separate civil proceeding, Corrigan was also convicted of the civil infraction of speeding. *See attached as Exhibit "6.* "

Corrigan filed an appeal with the superior court of Adams County for his civil infraction of speeding. On November 7, 2003, the superior court affirmed the district court's determination that Corrigan was in fact speeding. *See attached as Exhibit "7* " Corrigan then asked the Washington State Supreme Court to review the trial court's determination. *See attached as Exhibit "8.* " On February 26, 2004, the State Supreme Court denied review of the speeding conviction. *See attached as Exhibit "9.* " Corrigan took his quest to the United States Supreme Court with a petition asserting the civil infraction procedures were unconstitutional and deprived due process. The U.S. Supreme Court denied review of his petition. *See attached as Exhibit "10.*

In addition, Corrigan appealed his criminal conviction for failure to sign the notice of infraction with the superior court for Adams County. *See attached as Exhibit "11.* " The superior court affirmed the judgment and sentence of the district court in a memorandum decision, dated November 18, 2003. *See attached as Exhibit "12.* " After the superior court's memorandum decision, Corrigan filed a notice of discretionary review with the court of appeals of the State of Washington, division III. The matter was assigned to a court commissioner, who denied Corrigan's request for discretionary review on March 16, 2004. *See attached as Exhibit "13.* " On April 5, 2004, Corrigan elected to file a motion to modify commissioner's ruling. The appellate court declined to modify the ruling. *See attached as Exhibit "14.* " The superior court remanded the case back to the district court for imposition of Corrigan's sentence. On May 7, 2004, Corrigan filed a motion for discretionary review with the Washington State Supreme Court. On August 12, 2004, the State Supreme Court denied his motion. *See attached as Exhibit "15.* " On November 3, 2004, the State Supreme Court denied Corrigan's motion to modify its ruling. *See attached as Exhibit "16.* " On December 8, 2004, Corrigan filed a petition for writ of habeas corpus with the superior court in Adams County. The superior court denied his petition on December 9, 2004. *See attached as Exhibit "17.* " At that point, Corrigan petitioned the United States Supreme Court, asserting that

his conviction for failing to sign the notice of infraction was in violation of the Fourth, Fifth, and Eighth Amendments of the U.S. Constitution. His petition fora writ of certiorari was denied. *See attached as Exhibit "18.* "

Besides filing his state actions, Corrigan filed a civil action in the United States District Court Eastern District of Washington, seeking damages pursuant to 42 U.S.C. section 1983 and the laws of Washington State. *See Complaint, attached at Exhibit "19.* " In the complaint, Corrigan alleged a cause of action to "redress the deprivation by the defendants of rights secured to the plaintiff by the Constitution and laws of the United States and the State of Washington." Id. Corrigan argued that his arrest was unlawful and without probable cause, that he suffered false imprisonment, malicious prosecution, and abuse of process. Id. He asserted that his action arose out of the Fourth, Sixth, and Fourteenth Amendments to the U. S. Constitution and Title 42 of the United States Code, § 1983 and the laws of Washington. Id. This action was brought against Adams County, the troopers involved in the arrest, the prosecutor, and the district court judge for Adams County.

The federal district court granted WSP Trooper Dale and Trooper Burt's motion for summary judgment with respect to the federal claims of false arrest and false imprisonment. See Exhibit "]. " The court also granted the summary judgment motion brought by Judge

Hille, Deputy Prosecuting Attorney Scudder, Sheriff Barger, and Adams County with respect to the federal claims. Id. The motion brought by all defendants concerning Corrigan's state law claims was granted, and his claims under state law were dismissed with prejudice. Id. This decision was recently upheld by the Ninth Circuit Court of Appeals. *See attached at Exhibit "20."*

Even in the wake of every court denying his appeals and motions, Corrigan failed to serve his sentence. As a result, the Adams County Court issued a show cause order requiring Mr. Corrigan to appear and explain why he had not done so. *See attached at Exhibit -21.* " Mr. Corrigan failed to appear for the show cause hearing, and a warrant was signed on December 1, 2004, for Mr. Corrigan's arrest. *See attached at Exhibit "22.* " On April 10, 2005, King County Deputy Sheriff Officers advised Corrigan that they had a warrant for his arrest. After being arrested, Corrigan served two days in King County Jail. Mr. Corrigan then voluntarily appeared in Adams County to complete the three days of his five-day sentence. After serving his sentence, Corrigan filed the complaint in this action alleging deprivation of his constitutional rights, and rights under Washington statues.

As noted above, a lawful warrant was issued by the court based on Mr. Corrigan's conviction. Adams County acted on the warrant by forwarding it to King County, where Mr.

Corrigan resided. There is no legal or factual basis for Mr. Corrigan's claims against Adams County for merely disseminating a valid warrant, and therefore, this action should be dismissed.

Moreover, this action is nothing more than a repeat of the prior claims brought by Corrigan, which have all been reviewed and denied. As noted, the arrest and convictions of Corrigan have all been determined to be lawful. Likewise, the warrant and incarceration of Corrigan based on these convictions are also lawful. The warrant was issued by Judge Joshua Grant, and the arrest for failure to serve the 5-day sentence was made by King County. There are no claims remaining against Adams County which have not been previously addressed and determined to be lawful.

III. Adams County Is Entitled to Receive Attorneys' Fees and Costs Under F.R.C.P. 11.

Civil Rule 11 provides for the imposition of sanctions when a pleading is frivolous, legally unreasonable, without factual foundation, or is brought for an improper purpose. Fed.R.Civ.P. 11(b)(1), (2), (3). *Warren v. Guelker*, 29 F.3d 1386 (1994), *citing Conn v. Borjorquez*, 967 F.2d 1418, 1420 (9th Cir. 1992); *Operating Eng'rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1344 (9th Cir. 1988).

A pro se plaintiff is subject to the

provisions of Rule 11. *Id.; see Wright v. Tackett*, 39 F.3d 155 (1994), cert. den. 513 U.S. 1150; *Mayfield v. Klevenhagien*, 941 F.2d 346 (5th Cir. 1991); *Patterson v. Aiken*, 841 F.2d 386 (11th Cir. 1988); *see also* Committee Note, 97 F.R.D. at 199. Once Rule 11 is found to be violated, judges are required to impose sanctions. *Business Guide, Inc. v. Chromatic Communications Enter., Inc.*, 892 F.2d 802, 808 (9th Cir. 1989). The Rule then defers to a judge's discretion in choosing an appropriate sanction. Id.

In reviewing Rule 11 and the alleged misconduct, a court is to impose an objective standard of conduct. *Id., citing In re Disciplinary Action Against Mooney*, 841 F.2d 1003, 1005 (9th Cir. 1988)("The requirements of Rule 11 are measured by an objective standard. Subjective good faith is not relevant."); *see also Schwarzer, Sanctions Under the New Federal Rule 11 –A Closer Look*, 104 F.R.D. 181, 187 (1985)("There is no room for a pure heart, empty head defense under Rule 11"). Sanctions are imposed for violation of Rule 11 to the extent it is sufficient to deter repetition of the improper conduct. Fed.R.Civ.P. 11(c)(2).

In this case, Plaintiff has brought a claim against Adams County after Plaintiff was arrested. Plaintiff contends that this conduct somehow violated his constitutional rights. However, Adams County Sheriff's Department's involvement was the entering of the warrant into the State database. The prosecuting officer, who

has not been named, followed up on the status of the warrant. These actions violated none of Plaintiff s constitutional rights. Moreover, in acting upon a valid warrant, Adams County personnel are immune from the cause of action asserted. *Coverdell v. Dep't of Social and Health Servs.*, 834 F.2d 758 (9th Cir. 1987). Furthermore, because Plaintiff s conviction has been found valid, no constitutional law claim can be asserted for Defendants acting upon an arrest warrant following the conviction. *Cabrera v. City of Huntington Park*, 159 F.3d 374 (9th Cir. 1998). To the extent Plaintiff asserts that his arrest and conviction were somehow invalid, these issues have been addressed and resolved against Plaintiff numerous times. Plaintiffs claims are frivolous, and Plaintiff has failed to establish any factual or legal basis for his Complaint, which has been previously litigated.(See Exhibits "1," "19," and "20.") Plaintiff seems likely to continue filing actions unless he is appropriately sanctioned.

Though a Court is to take into account a plaintiff's pro se status when determining whether a Complaint is reasonable, Plaintiff Corrigan's actions and conduct in this case more than merit sanctions. *Warren,* 29 F.3d at 1390; *Harris v. Heinrich*, 919 F.2d 1515, 1516 (11th Cir. 1990); *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987). The Court in *Kurkowski* held while "we recognize that pro se complaints are read liberally. . . they still may be frivolous if

filed in the face of previous dismissals involving the exact same parties under the same legal theories." *Id.*

As denoted in the above-cited cases, Plaintiff Corrigan has filed this action, which is based on the same facts and theories as the action previously filed and dismissed in the Eastern District Federal Court. (See Order on Summary Judgment attached as Exhibit "1" and Plaintiff's prior Complaint at Exhibit "19"). Judge Van Sickle's decision was upheld by the Ninth Circuit Court of Appeals. (See attached Decision at Exhibit "20").[5]

It is interesting to note the Decision attached as Exhibit "20" found Plaintiff Corrigan's conduct frivolous against Adams County District Judge Hille, but overruled Rule 11 sanctions only on the basis Adams County did not comply with the Rule 11 safe harbor provisions.

IV. Conclusion

Plaintiff Corrigan's Complaint is frivolous and imposed for an improper purpose, as it is filed in the face of previous dismissals involving nearly identical parties under nearly identical

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[5] The attached Decision is not provided as precedential value, but merely as an exhibit to show the Court affirmed the dismissal of Plaintiffs previous actions against Adams County and its employees on the same theories.

legal theories. Plaintiff's conduct will only continue to harass Adams County and its employees unless this Court enters sanctions appropriate to deter similar conduct. Adams County respectfully requests that its Motion for Sanctions of Attorney Fees and Costs be granted.

Respectfully submitted this 28th day of April, 2006.

KIRKPATRICK & STARTZEL, P.S.

By: _____
PAUL L.
Att

No. 07-876

FILED
FEB 4 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

JOHN L. CORRIGAN,

Petitioner,

v.

UNKNOWN KING COUNTY DEPUTY, #1, et al.,

Respondents.

On Petition For Writ of Certiorari To The Ninth Circuit Court of Appeals

BRIEF IN OPPOSITION

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REASONS TO DENY THE PETITION FOR CERTIORARI

Petitioner Corrigan has failed to establish any legal or factual basis which would qualify this case for review on a Writ of Certiorari. As set forth below, the Ninth Circuit Court of Appeals properly reviewed and analyzed the district court's decision to order sanctions against Corrigan for violation of Rule 11 of the Federal Rules of Civil Procedure. (See Petition for Writ of Certiorari, hereafter "Petition," at Appendix 34-35). The court of appeals correctly held the district court did not abuse its discretion in finding Rule 11 had been violated by Corrigan and, after providing notice and a reasonable opportunity to be heard, imposing an appropriate sanction to deter future violations. *Id.* at 19-33.

The Petition fails to meet the criteria for the granting of a Writ of Certiorari. The Petition does not establish the decision of the Ninth Circuit Court of Appeals decided an important question of federal law that has not been, but should be, settled by this Court or that the decision regarded an important federal question in a way that conflicts with relevant decisions of this Court. Sup. Ct. R.10(c). Further, the Petition should be denied as Corrigan has not shown the questions presented would resolve any conflict in decisions among the United States Court of Appeals, nor has he shown the Ninth Circuit Court of Appeals has decided any important federal question in a way which conflicts with any decision of a state court of last resort. *Id.* The Petition also fails to establish the

court of appeals decision "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." Sup. Ct. R.10(a). In essence, there is no compelling reason for granting the Petition.

A. Statement of the Case

Respondents Adams County, Adams County Sheriff Barger, and Unknown Adams County Official (hereafter collectively "Adams County") provide the following clarification of facts and procedural history regarding the issues raised in the Petition. Sup. Ct. R.15(2). This matter arises from Corrigan's conviction of a misdemeanor in Adams County, State of Washington for refusing to sign a traffic infraction. Corrigan exhausted all available appeals in the Washington State judicial system, up through the state supreme court, in requesting his misdemeanor conviction be overturned and by filing petitions for *habeas corpus*, all of which were denied. Corrigan also petitioned the United States Supreme Court, asserting his conviction for failure to sign a Notice of Traffic Infraction was in violation of the Fourth, Fifth, and Eighth Amendments of the U.S. Constitution. His Petition for Writ of Certiorari was denied. Corrigan also filed a civil action in the United States District Court in the Eastern District of Washington against Respondents, the state court judge which imposed his sentence, the deputy prosecuting attorney who prosecuted the misdemeanor as well as

Washington State Patrol troopers, complaining of various statutory and civil rights violations. Summary judgment was granted on his claims by the district court. The Ninth Circuit Court of Appeals affirmed the decision.

Even in the wake of every court denying his appeals and motions, Corrigan failed to serve the sentence imposed for the criminal conviction. As a result, the Adams County Court issued a lawful warrant for his arrest. Adams County forwarded the lawful warrant to King County, Washington, where Corrigan resided. Corrigan was subsequently arrested on the warrant. The arrest and conviction of Corrigan were ultimately determined to be lawful. Likewise, the warrant and incarceration of Corrigan based on the misdemeanor conviction were also upheld as lawful.

Despite the dismissal of civil rights claims in the Federal District Court of the Eastern District of Washington, Corrigan then filed another suit against Adams County in the District Court of the Western District of Washington. This lawsuit reasserted the claims that were previously dismissed.

On March 9, 2006, Adams County's counsel mailed a copy of the County's proposed Motion for Rule 11 Sanctions, the County's Memorandum of Authorities in Support of the Motion for Rule 11 Sanctions, and a cover letter advising Corrigan that pursuant to Federal Rules of Civil Procedure Rule 11(c)(1), that if his Complaint was not dismissed as to

Adams County within the 21-day safe harbor provision, the Motion and Memorandum would be filed with the court. These materials were provided via U.S. Postal Service, certified mail with return receipt requested. On March 18, 2006, Corrigan verified receiving these materials via his signature on the registered mail receipt.

More than 21 days passed from Corrigan providing verified receipt of Adams County's Motion for Rule 11 Sanctions and the Memorandum of Authorities in Support of said Motion, with Corrigan taking no action to dismiss his Complaint or provide any reply whatsoever. On April 28, 2006, pursuant to Rule 11(c), Adams County filed its Motion for Rule 11 Sanctions and Memorandum of Authorities with the court. By *separate* motion, Adams County also moved the court for an Order of Summary Judgment dismissing all claims against Adams County. To promote judicial economy, and pursuant to local court rule, both motions were scheduled to be heard on the same day.

On May 22, 2006, Corrigan filed his response to the Motion for Summary Judgment and the Motion for Sanctions. Corrigan chose to combine his response to each motion in one brief.

On August 2, 2006, the district court issued its Order on Adams County Defendants' Motions for Summary Judgment and for Rule 11 Sanctions. (See Petition Appendix, pp. 1-29). In that Decision, the district court granted the Motion for Summary

Judgment dismissing all claims by Corrigan against Adams County. The court granted, in part, Adams County's Motion for Rule 11 Sanctions. The court mandated that within 30 days of its Order, Adams County was to file a Motion documenting the reasonable attorney's fees they incurred as a result of the Rule 11 violations found by the court. The court specifically allowed Corrigan to "offer evidence relevant to determine an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof." *Id.* at 29. As directed by the court, Adams County filed its Motion and Materials for Specific Sanctions on August 17, 2006. Corrigan filed a Response, on August 30, 2006.

On October 27, 2006, the court issued an Order on Adams County Motion Seeking Specific Sanctions, granting the motion in part, and denying it in part. Specifically, the court declined to impose Adams County's requested sanction amount of $18,070.41, and instead the court found, "that a monetary sanction of $10,000 should be sufficient to deter Plaintiff from filing frivolous claims in the future." *Id.* at 32. It should be noted Corrigan has failed to include the complete Order of the court on Adams County's Motion Seeking Specific Sanctions in the Petition's Appendix.

B. The Ninth Circuit Court of Appeals Did Not Depart From the Accepted and Usual Course of Judicial Proceeding in Affirming the Sanctions Against Corrigan.

In reviewing the District Court's Orders regarding Rule 11 violations and sanctions, the appellate court correctly applied an abuse of discretion standard regarding all aspects of the district court's decisions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 399, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990).

Adams County properly provided Corrigan with a thorough brief explaining why his claim did not have any legal or factual basis. This authority was provided to Corrigan more than 21 days before Adams County filed its Motion for Rule 11 Sanctions, in compliance with Rule 11(c)(1). Despite being provided this Motion, Memorandum of Authorities, and cover letter explaining their significance, Corrigan refused to dismiss any of his causes of action against Adams County. Instead, Corrigan filed a response contesting the Motion.

Despite Corrigan's disagreement with the award of sanctions, it is clear the District Court judge did not abuse her discretion when analyzing each of the factors set forth in the Advisory Committee notes to the 1993 amendments to Rule 11. (See Petition Appendix pp. 19-29). The court noted that a valid arrest warrant was issued after Corrigan had been convicted and sentenced. Given this conviction and the validity of the warrant, the judge concluded there was

no legal basis for the various causes of action being pursued by Corrigan. The court of appeals correctly found no abuse of discretion had occurred and affirmed the district court decisions.

C. Corrigan's Due Process Claim is Not Supported by Fact or Law and Does Not Constitute a Compelling Reason for Review by Writ of Certiorari.

Corrigan has failed to provide any legal authority or factual argument to support his contention his due process rights were violated by the district court or the court of appeals. First, Corrigan provides irrelevant arguments distinguishing between what he termed in his Petition as Sanc'ion I and Sanction II. (See Petition at pp. 7-8.) Sanction I, arising from his first suit which was filed in the Eastern District of Washington, verifies Corrigan's civil action against Adams County, including the judge imposing his criminal sentence, was frivolous. The sanctions were only overturned by the Ninth Circuit because Adams County, in that instance, failed to comply with the 21-day safe harbor provision. It is undisputed the 21-day safe harbor provision was complied with regarding the sanctions at issue in the Petition before this Court.

Corrigan's claim the district court improperly denied him due process by combining both the Summary Judgment Motion with the Rule 11 Motion is a mischaracterization of the facts and the procedural

record of the case. The Motion for Rule 11 sanctions, along with its Memorandum of Authorities in Support of said Motion, and Affidavit verifying compliance with the 21-day safe harbor of Rule 11(c)(1) were separate pleadings and filings. Subsequent to the 21-day safe harbor passing, and Corrigan taking no action to dismiss his Complaint as requested, the Motion for Summary Judgment, along with its accompanying Memorandum of Authorities in Support of said Motion, were also filed with the Court. Corrigan has never denied receiving the separate motions and in fact filed a responsive brief, choosing to combine his response to both motions in one brief.

Due process requires notice and the opportunity to be heard. The Tenth Circuit has held "the basic requirements of due process with respect to the assessment of costs, expenses, or attorney's fees are notice that such sanctions are being considered by the court and a subsequent opportunity to respond." *Dominion Video Satellite, Inc. v. Echostar Satellite, LLC*, 430 F.3d 1269, 1279 (10th Cir. 2005), citing *Braley v. Campbell*, 832 F.2d 1504, 1510 (10th Cir. 1987). In regard to a Rule 11 Motion for Sanctions, the moving party provides all the due process owed to the opposing party when the safe harbor requirements of Rule 11 are complied with. *Holgate v. Baldwin*, 425 F.3d 671, 678 (9th Cir. 2005). Further, Rule 11 sanctions do not violate a party's right to due process on the grounds of lack of notice or opportunity to be heard when the offending party had notice of the Motion for Rule 11 sanctions and had an opportunity to be heard

by opposing the Motion. *Int'l Ore & Fertilizer Corp. v. SGS Control Svcs., Inc.*, 38 F.3d 1279, 1286 (2nd Cir. 1994).

In the case at bar, there is no dispute or contention by Corrigan that the safe harbor provisions of Rule 11(c)(1) were not complied with in this case. Adams County, in seeking Rule 11 sanctions, did not combine its Motion or briefing with the Motion for Summary Judgment into one filing. Two separate motions and two separate memorandums of authorities and supporting affidavits were filed with the court. Corrigan provided a brief in response to the Summary Judgment Motion and for the Motion for Rule 11 Sanctions. Upon receiving the trial court's Order finding Rule 11 had been violated by Corrigan, the court then provided notice and an opportunity to be heard in determining an appropriate sanction. (See Petition Appendix at 28-29, 33). Corrigan again filed responsive documents to Adams County's Motion in Support of Specific Sanctions being entered.

Corrigan received all the due process owed to him by Adams County satisfying the safe harbor requirements of Rule 11. *Holgate*, 425 F.3d at 678. The mere fact of Corrigan filing responsive briefs to the Motion for Rule 11 Sanctions and the Motion for Specific Sanctions eliminates any other due process argument Corrigan may have. *Int'l Ore & Fertilizer Corp.*, 38 F.3d at 1286.

Corrigan has failed to cite any authority which supports his claim that due process has been violated

in this case. The very purpose of the Federal Rules of Civil Procedure is to "secure the just, speedy, and inexpensive determination of every action." F.R.C.P. Rule 1. Scheduling a Motion for Rule 11 Sanctions and a separate Motion for Summary Judgment to be heard on the same hearing date, within the time frames of both Rule 11 and Rule 56, does not violate due process.

Corrigan's Petition fails to provide any compelling reason for this Court to hear this case on a Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Adams County respectfully requests this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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[1] Mr. Harwood's Application for Admission to the U.S. Supreme Court Bar has been filed and is currently pending with the Clerk of the Court.